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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91164764
Party	Plaintiff Brink's Network, Incorporated
Correspondence Address	ALAN S. COOPER HOWERY SIMON ARNOLD & WHITE LLP 1299 PENNSYLVANIA AVENUE NW WASHINGTON, DC 20004 UNITED STATES lapidusn@howrey.com, ipdocketing@howrey.com, figginsl@howrey.com
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Signature	/Alan S. Cooper/
Date	12/21/2009
Attachments	Opposer's Motion to Enforce Suspension of Proceedings.pdf (5 pages)(167669 bytes) Memo in Support of Opposer's Motion to Enforce Suspension of Proceedings.pdf (11 pages)(432907 bytes) Declaration of Kristin D'Andrea in Support of Opposer's Motion to Enforce Suspension of Proceedings.pdf (46 pages)(1600553 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

BRINK'S NETWORK, INCORPORATED)	
)	
Opposer)	
v.)	
)	Opposition No. 91164764
THE BRINKMANN CORPORATION)	
)	
Applicant)	
)	
)	

OPPOSER'S MOTION TO ENFORCE
SUSPENSION OF PROCEEDINGS

Opposer, Brink's Network, Incorporated, respectfully moves the Trademark Trial and Appeal Board to issue an Order directing Applicant, Brinkmann Corporation, to refrain from taking any action to compel the discovery deposition of and the production of documents by Hampton Products International Corporation ("Hampton"), a non-party, pursuant to subpoena until the Board decides Opposer's pending Motion to Compel Discovery Deposition of Mr. J. Baxter Brinkmann ("Motion to Compel"), filed on October 1, 2009. The filing of the Motion to Compel resulted in the Board's Order of October 24, 2009, that suspended proceedings pending disposition of that Motion in accordance with Rule 2.120(e)(2) of the Trademark Rules of Practice.

Opposer also requests the Board to indicate in the Order disposing of this motion that an appropriate sanction will be imposed if Applicant proceeds with filing any motion in the U.S. District Court for the Central District of California seeking to compel discovery pursuant to the subpoenas served on Hampton before the Board decides Opposer's Motion to Compel and directs that proceedings be resumed.

The grounds for this motion are as follows:

(1) On or about August 10, 2009, Applicant served subpoenas on Hampton, which is located in Foothill Ranch, California, requiring the production of documents on August 25, 2009, and the discovery deposition of Hampton pursuant to Rule 30(b)(6) Fed. R. Civ. P. on September 1, 2009. The statutory basis for the subpoenas served on Hampton is 35 U.S.C. § 24 which authorizes the issuance of subpoenas in contested cases in the U.S. Patent and Trademark Office ("USPTO").

(2) Hampton is not a party to this opposition proceeding. Hampton has been licensed to use the marks BRINK'S and BRINK'S & Design on which Opposer is relying in this proceeding.

(3) Following the service of the subpoenas, counsel for the parties agreed to postpone the discovery deposition of Hampton until a mutually agreeable date in mid-October 2009. However, no agreement as to the specific date for the deposition was reached.

(4) On May 28, 2009, well prior to any of Applicant's efforts to take discovery from Hampton, Opposer advised Applicant of its intention to take the discovery deposition of Applicant's President, Mr. J. Baxter Brinkmann.

(5) Opposer made repeated efforts to obtain a commitment from Applicant as to a date on which Mr. Brinkmann would appear for his deposition and, at the recommendation of Applicant's counsel, served a Notice of Taking Deposition of Mr. J. Baxter Brinkmann on August 14, 2009. Despite such requests and the service of the Notice of Taking Deposition, Applicant failed to provide a single date on which Mr. Brinkmann would appear for his deposition.

(6) In view of Applicant's continuing refusal to cooperate in producing Mr. Brinkmann for his deposition, Opposer filed the Motion to Compel on October 1, 2009.

(7) On October 24, 2009, the Board in accordance with Rule 2.120(e) of the Trademark Rules of Practice issued an Order directing that proceedings be suspended pending disposition of Opposer's Motion to Compel.

(8) Notwithstanding the Board's Order suspending proceedings and the pertinent language in the last sentence of Rule 2.120(e)(2) which limits the exception to the suspension of proceedings to discovery involving a party, Applicant has threatened to file a motion to compel Hampton, a non-party, to comply with the discovery subpoenas.

(9) The discovery sought by Applicant from non-party Hampton is precluded by the last sentence of Rule 2.120(e)(2), which excepts from the suspension only discovery requests directed to a party, until proceedings are resumed.

(10) The role of the U.S. District Courts in enforcing a subpoena issued pursuant to 35 U.S.C. § 24 in an opposition proceeding is supportive and intended to ensure the smooth functioning of the procedures adopted by the USPTO.

(11) The ancillary power to issue subpoenas conferred by 35 U.S.C. § 24 may not be used to obtain discovery that is not permitted under the Trademark Rules of Practice.

(12) Where, as in this instance, the discovery sought by Applicant is temporarily precluded by Rule 2.120(e)(2), the U.S. District Court would not enforce a subpoena seeking such discovery. For that reason alone, Applicant should not be permitted to waste the parties' time and resources in filing a groundless motion with the U.S. District Court.

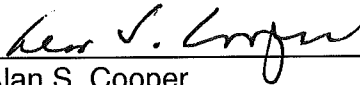
For the reasons stated above, Opposer submits that the relief sought by the foregoing motion is fully warranted and that Applicant should be directed by the Board to refrain from filing any motion in the U.S. District Court for the Central District of California seeking to compel Hampton to comply with the subpoenas in question pending the resumption of proceedings by the Board. Opposer also requests the Board to indicate in the Order disposing of this motion that an appropriate sanction will be imposed if Applicant

proceeds with filing any motion in the U.S. District Court for the Central District of California seeking to compel discovery pursuant to the subpoenas served on Hampton before the Board decides Opposer's Motion to Compel and directs that proceedings be resumed.

A Memorandum in support of this Motion and the supporting Declaration of Kristin T. D'Andrea are submitted concurrently herewith.

BRINK'S NETWORK, INCORPORATED

Date: December 21, 2009

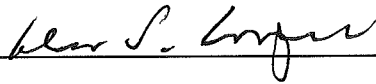
By: 
Alan S. Cooper
Nancy S. Lapidus
Howrey LLP
1299 Pennsylvania Avenue, N.W.
Washington, DC 20004
(202) 783-0800
Fax: (202) 383-7195

Attorneys for Opposer

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Opposer's Motion to Enforce Suspension of Proceedings was served on the following counsel of record for Applicant by Federal Express, with confirming service by depositing the same in the U.S. Mail, first class mail postage prepaid, this 21st day of December, 2009:

Gary Clark, Esq.
Susan Hwang, Esq.
Sheppard, Mullin, Richter & Hampton LLP
333 South Hope Street, 48th Floor
Los Angeles, California 90071



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

BRINK'S NETWORK, INCORPORATED)	
)	
Opposer)	
v.)	
THE BRINKMANN CORPORATION)	Opposition No. 91164764
)	
Applicant)	

MEMORANDUM IN SUPPORT OF
OPPOSER'S MOTION TO ENFORCE
SUSPENSION OF PROCEEDINGS

I. INTRODUCTION

This matter is before the Board on Opposer's motion to enforce the suspension of proceedings, pursuant to Rule 2.120(e)(2) of the Trademark Rules of Practice, resulting from the filing of Opposer's Motion to Compel Discovery Deposition of Mr. J. Baxter Brinkmann ("Motion to Compel"), on October 1, 2009. Specifically, the present motion requests the Board to direct Applicant, Brinkmann Corporation, to refrain from taking any action to compel the discovery deposition of and the production of documents by Hampton Products International Corporation ("Hampton"), a non-party, pursuant to subpoena until the Board decides Opposer's pending Motion to Compel.

Opposer also requests the Board indicate in the Order disposing of the subject motion that an appropriate sanction will be imposed if Applicant proceeds with filing any motion in the U.S. District Court for the Central District of California seeking to compel discovery pursuant to the subpoenas served on Hampton before

the Board renders a decision as to Opposer's Motion to Compel and directs that proceedings be resumed.

II. FACTUAL BACKGROUND

On January 17, 2003, Applicant filed Application Serial No. 76/483,115 seeking to register the mark BRINKMANN for a variety of goods including home security systems and components therefor, namely, motion sensitive home security lights, detectors, receivers, transmitters, adapters and wall mount brackets (the "Opposed Application"). The Opposed Application was published for opposition on October 5, 2004. Opposer filed a timely Notice of Opposition to the Opposed Application on April 1, 2005.

On May 28, 2009, during the course of discovery, Opposer advised Applicant of its intention to take the discovery deposition of Applicant's President, Mr. J. Baxter Brinkmann.¹ Opposer made repeated efforts to obtain a commitment from Applicant as to a date on which Mr. Brinkmann would appear for his deposition and, when no response was received as to an acceptable date, Opposer, acting on the recommendation of Applicant's counsel, served a Notice of Taking Deposition of Mr. J. Baxter Brinkmann on August 14, 2009. Despite such requests and the service of the Notice of Taking Deposition, Applicant failed to provide a single date on which Mr. Brinkmann would appear for his deposition.

In view of Applicant's continuing refusal to cooperate in setting a date for Mr. Brinkmann's deposition, Opposer filed the Motion to Compel on October 1, 2009. On October 24, 2009, the Board, in accordance with Rule 2.120(e)(2) of the

¹ Mr. Brinkmann had been identified in Applicant's Answers to Opposer's Second Set of Interrogatories, served on May 26, 2009, as a witness whose testimony Applicant intends to present in this proceeding.

Trademark Rules of Practice, issued an Order directing that proceedings be suspended pending disposition of Opposer's Motion to Compel. Opposer's Motion to Compel currently is pending before the Board.

On or about August 10, 2009, Applicant served subpoenas on Hampton, a third-party licensee of the marks BRINK'S and BRINKS & Design, which is located in Foothill Ranch, California, requiring the production of documents on August 25, 2009, and a discovery deposition pursuant to Rule 30(b)(6) Fed. R. Civ. P. on September 1, 2009.² The statutory basis for the subpoenas served on Hampton is 35 U.S.C. § 24, which authorizes the issuance of subpoenas in contested cases in the U.S. Patent and Trademark Office ("USPTO").

Following the service of the subpoenas, counsel for the parties agreed to postpone the discovery deposition of Hampton until a mutually agreeable date in mid-October 2009. However, no agreement as to the specific date for the deposition was reached. By letter dated August 20, 2009, Applicant stated that it would consider availability dates for the Hampton deposition in October 2009 and communicate such dates to Opposer.³ Applicant did not provide Opposer with any proposed dates for the Hampton deposition.

² True copies of the subpoenas in question, signed by Applicant's counsel and bearing the imprinted caption of the United States District Court for the Central District of California, are annexed hereto as Appendix A to the Declaration of Kristin T. D'Andrea in support of Opposer's Motion to Enforce Suspension of Proceedings (hereinafter "D'Andrea Declaration"), which is filed concurrently herewith.

³ A true copy of the August 20, 2009 letter from Ms. Hwang (Applicant's counsel) to Ms. Lapidus (Opposer's counsel) is annexed as Appendix B to the D'Andrea Declaration.

On October 7, 2009, Applicant requested that Hampton produce responsive documents and provide availability dates in November 2009 for a deposition.⁴ Opposer advised Applicant in correspondence dated October 21, 2009, that the filing of Opposer's Motion to Compel and resulting suspension of the proceedings under Rule 2.120(e)(2) tolls the time for compliance with outstanding discovery obligations of a non-party such as Hampton, and that Hampton accordingly would serve responses and objections to the subpoenas and provide proposed dates for the deposition after disposition of Opposer's Motion to Compel and the resumption of proceedings.⁵

In correspondence dated October 30, 2009, Applicant disagreed with the plain language of Rule 2.120(e)(2), but failed to cite a single Rule or case to support its argument that the term "party" in Rule 2.120(e)(2) includes a non-party such as Hampton.⁶ Applicant also questioned the timing of Opposer's reliance on Rule 2.120(e)(2) in light of the prior suspension of proceedings resulting from Applicant's motion to divide the opposed application. In response, by letter dated November 13, 2009,⁷ Opposer pointed out the distinction between the suspension of proceedings resulting from Brinkmann's filing of a motion to divide and the suspension of

⁴ A true copy of the October 7, 2009 letter from Ms. Hwang to Ms. Lapidus is annexed as Appendix C to the D'Andrea Declaration.

⁵ A true copy of the October 21, 2009 letter from Ms. Lapidus to Ms. Hwang is annexed as Appendix D to the D'Andrea Declaration.

⁶ A true copy of the October 30, 2009 letter from Ms. Hwang to Ms. Lapidus is annexed as Appendix E to the D'Andrea Declaration. In that letter, Applicant also attempted to obscure its failure to follow-up on its August 20 letter and provide proposed dates for the Hampton deposition.

⁷ A true copy of the November 13, 2009 letter from Ms. Lapidus to Ms. Hwang is annexed as Appendix F to the D'Andrea Declaration.

proceedings resulting from Opposer's Motion to Compel. As the latter suspension is governed by Rule 2.120(e)(2), Opposer properly relied on Rule 2.120(e)(2) at the appropriate time, after the Motion to Compel was filed.

On December 11, 2009, Applicant advised of its intention to seek an Order from the U.S. District Court for the Central District of California unless the discovery directed to Hampton, a non-party in the subject proceeding, goes forward.⁸ Applicant also requested a telephone conference to discuss the threatened motion in accordance with the local rules of the U.S. District Court for the Central District of California. Opposer agreed to such a telephone conference which occurred on December 21, 2009. During that telephone conference, the parties maintained their respective conflicting positions regarding the interpretation of Rule 2.120(e)(2) and the timing of Hampton's compliance with the subpoenas directed to discovery. During that telephone conference, Opposer advised Applicant of its intent to file the subject Motion to Enforce Suspension of Proceedings on the ground that any motion filed by Applicant in the U.S. District Court for the Central District of California would constitute a violation of Rule 2.120(e)(2) of the Trademark Rules of Practice and should be prohibited by the Board.

III. ARGUMENT

Rule 2.120(e)(2) states, in pertinent part, as follows:

When a party files a motion for an order to compel . . . discovery, the case will be suspended by the Trademark Trial and Appeal Board with respect to all matters not germane to the motion. After the motion is filed and served, no party should file any paper which is not germane to the motion, except as otherwise specified in the Board's suspension order. . . . The filing of a motion

⁸ A true copy of the December 11, 2009 letter from Ms. Hwang to Ms. Lapidus is annexed as Appendix G to the D'Andrea Declaration.

to compel . . . discovery shall not toll the time for *a party* to . . . respond to any outstanding discovery requests or to appear for any noticed discovery deposition.

37 C.F.R. § 2.120(e)(2) (emphasis added). Rule 2.120(e)(2) thus provides that the filing of a motion to compel results in a suspension of the proceedings, although that suspension does not toll the time for *a party* to comply with outstanding discovery obligations or appear for any noticed discovery deposition.

Hampton is not a party to the subject proceeding. Accordingly, the requirements of Rule 2.120(e)(2) related to discovery obligations of a party do not apply. The plain language of Rule 2.120(e)(2) is crystal clear – the suspension of the proceedings does not toll the time for *a party's* compliance with outstanding discovery obligations. As Hampton is not a party to this proceeding (*i.e.*, it is neither the opposer nor the applicant), it is not required to produce documents or appear for a deposition until proceedings are resumed.

The statutory basis for the subpoenas served on Hampton is 35 U.S.C. § 24, which authorizes the issuance of subpoenas in contested cases in the U.S. Patent and Trademark Office.⁹ As discussed below, the decisions construing 35 U.S.C. § 24 clearly establish that subpoenas issued pursuant thereto should be enforced in accordance with the procedural rules of the Trademark Trial and Appeal Board.

⁹ The relevant provision in 35 U.S.C. § 24 is as follows:

The clerk of any United States court for the district wherein testimony is to be taken for use in any contested case in the Patent and Trademark Office, shall, upon the application of any party thereto, issue a subpoena for any witness residing or being within such district, commanding him to appear and testify before an officer in such district authorized to take depositions and affidavits, at the time and place stated in the subpoena. The provisions of the Federal Rules of Civil Procedure relating to the attendance of witnesses and to the production of documents and things shall apply to contested cases in the Patent and Trademark Office.

In *Rosenruist-Gestao E Servicos LDA v. Virgin Enters.*, 511 F.3d 437 (4th Cir. 2007), the opposer sought to compel the applicant to designate a Rule 30(b)(6) witness and appear for a deposition as directed by a subpoena issued pursuant to 35 U.S.C. § 24. The District Court denied the opposer's motion on the ground that the term "witness," in the context of 35 U.S.C. § 24, applied only to natural persons but not corporations. The Court of Appeals reversed, stating that the subpoena power set forth in § 24 "assigns a supportive role to the district courts to ensure the smooth functioning of the procedures adopted by the PTO." *Id.* at 444 (emphasis added). The Court of Appeals determined that the subpoena issued pursuant to 35 U.S.C. § 24 should be enforced in accordance with the rules of procedure adopted for contested proceedings before the Trademark Trial and Appeal Board, which allow for Rule 30(b)(6) depositions and thus reversed the order of the District Court denying the opposer's motion to compel and remanded for further proceedings consistent with its opinion. *Id.* at 448-49; *see also Sheehan v. Doyle*, 513 F.2d 895, 898 (1st Cir. 1975) ("We agree that section 24 is simply a provision giving teeth, through the courts' subpoena powers, to authority conferred upon the Commissioner of Patents.").

In *Diageo Brands, B.V. v. Compania Licorera De Centroamerica, S.A.*, 2007 U.S. Dist. LEXIS 68132 (S.D. Fla., Sept. 14, 2007), the opposer served a Rule 30(b)(6) deposition subpoena and a subpoena *duces tecum* on a third party. The applicant filed motions to quash the subpoena or alternatively seeking a protective order. *Id.* at *3. The District Court, referring to its powers under such circumstances, stated that it could "compel only that discovery contemplated by the USPTO's discovery rules and within the scope of discovery permitted by those rules." *Id.* at *8;

see also Brown v. Braddick, 595 F.2d 961, 966-67 (5th Cir. 1979) (holding that 35 U.S.C. § 24 authorizes a district court to enforce subpoenas only for materials that are discoverable in accordance with the rules of the USPTO).

Opposer's Motion to Compel is governed by Rule 2.120(e)(2), which requires a suspension of the proceedings and undeniably tolls discovery in the proceeding directed to any non-party such as Hampton. Applicant cannot be permitted to use the U.S. District Court to achieve that which is clearly prohibited by the Trademark Rules of Practice governing this *inter partes* proceeding. *See Sheehan*, 513 F.2d at 899 ("Our decision merely precludes use of federal courts as alternative forums of first resort rather than as forums acting strictly in aid of the primary proceeding.").

The suspension of proceedings currently in place pending disposition of the Motion to Compel tolls the obligations of non-party Hampton to respond to the subpoenas. The role of the U.S. District Courts in enforcing a subpoena issued pursuant to 35 U.S.C. § 24 in an opposition proceeding is to ensure the smooth functioning of the procedures adopted by the USPTO. Applicant should not be permitted to use the ancillary power of the U.S. District Court, pursuant to 35 U.S.C. § 24, to flout the clear and unambiguous language of Rule 2.120(e)(2) which does not permit discovery directed to a non-party at this time. Any motion filed by Applicant in the U.S. District Court for the Central District of California seeking to obtain discovery from Hampton at this time would constitute a violation of Rule 2.120(e)(2) of the Trademark Rules of Practice and should be prohibited by the Board.

The equities of this case also demonstrate that Applicant should not be permitted to proceed with discovery pending the outcome of Opposer's Motion to Compel. Since May 28, 2009, Opposer has made repeated efforts to secure a date


for the discovery deposition of Applicant's President, Mr. J. Baxter Brinkmann. Notwithstanding Opposer's ongoing requests for Mr. Brinkmann's availability dates and even the service of a Notice of Taking Deposition at the suggestion of Applicant's counsel, Applicant has engaged in a pattern and practice of delay and stonewalling to preclude Opposer from discovery it is legally entitled to obtain. As a result of Applicant's continuing refusal to cooperate in producing Mr. Brinkmann for his deposition, Opposer had no alternative but to file the Motion to Compel presently before the Board. In addition to violating Rule 2.120(e)(2), it would be unjust to allow Applicant to proceed with discovery during the suspension of proceedings when the subpoenas directed to Hampton were served long after Opposer initiated its attempts to take Mr. Brinkmann's deposition. Opposer should be afforded the opportunity to take the deposition of Mr. Brinkmann before Applicant is entitled to proceed with any additional discovery.

IV. CONCLUSION

For all of the foregoing reasons, Opposer respectfully requests that the Board grant this Motion to Enforce Suspension of Proceedings and direct Applicant to refrain from filing any motion in the U.S. District Court for the Central District of California seeking to compel Hampton to comply with the subpoenas in question pending the disposition of Opposer's Motion to Compel and resumption of proceedings by the Board. Opposer also requests the Board to indicate in the Order disposing of this motion that an appropriate sanction will be imposed if Applicant proceeds with filing any motion in the U.S. District Court for the Central District of California seeking to compel discovery pursuant to the subpoenas served on Hampton before the Board renders a decision as to Opposer's Motion to Compel and directs that proceedings be resumed.

BRINK'S NETWORK, INCORPORATED

Dated: December 21, 2009

By: _____

Alan S. Cooper
Nancy S. Lapidus
Howrey LLP
1299 Pennsylvania Avenue, N.W.
Washington, DC 20004
(202) 783-0800
Fax: (202) 383-7195

Attorneys for Opposer

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Memorandum in Support of Opposer's Motion to Enforce Suspension of Proceedings was served on the following counsel of record for Applicant by depositing the same in the U.S. Mail, first class mail postage prepaid, this 21st day of December, 2009:

Gary Clark, Esq.
Susan Hwang, Esq.
Sheppard, Mullin, Richter & Hampton LLP
333 South Hope Street, 48th Floor
Los Angeles, California 90071



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

BRINK'S NETWORK, INCORPORATED

Opposer

v.

THE BRINKMANN CORPORATION

Applicant

Opposition No. 91164764

DECLARATION OF KRISTIN T. D'ANDREA
IN SUPPORT OF OPPOSER'S MOTION TO
ENFORCE SUSPENSION OF PROCEEDINGS

KRISTIN T. D'ANDREA declares as follows:

(1) I am a Litigation Case Manager employed by Howrey LLP, counsel for Opposer Brink's Network, Incorporated, in the above-referenced opposition proceeding and have responsibility for maintaining the files in connection with that proceeding. The facts set forth below are based on my personal knowledge and, if called as a witness, I could and would testify competently with respect to these facts.

(2) A true copy of Applicant's Notice of Subpoena for Production of Documents and Deposition of Hampton Products International Corporation, signed by Applicant's counsel and bearing the imprinted caption of the United States District Court for the Central District of California, served on or about August 10, 2009, are annexed hereto as Appendix A.

(3) A true copy of a letter dated August 20, 2009 from Ms. Hwang, counsel for Applicant, to Ms. Lapidus, counsel for Opposer, is annexed hereto as Appendix B.

(4) A true copy of a letter dated October 7, 2009, from Ms. Hwang to Ms. Lapidus is annexed hereto as Appendix C.

(5) A true copy of a letter dated October 21, 2009, from Ms. Lapidus to Ms. Hwang is annexed hereto as Appendix D.

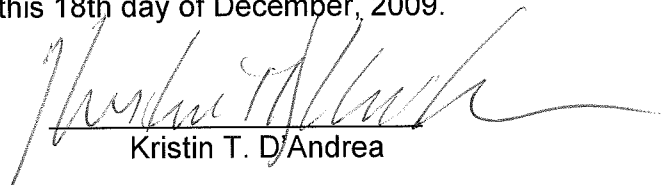
(6) A true copy of a letter dated October 30, 2009, from Ms. Hwang to Ms. Lapidus is annexed hereto as Appendix E.

(7) A true copy of a letter dated November 13, 2009, from Ms. Lapidus to Ms. Hwang is annexed hereto as Appendix F.

(8) A true copy of a letter dated December 11, 2009, from Ms. Hwang to Ms. Lapidus is annexed hereto as Appendix G.

In accordance with 28 U.S.S. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

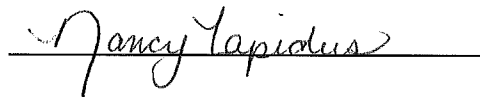
Executed at Washington, D.C., this 18th day of December, 2009.


Kristin T. D'Andrea

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Declaration of Kristin T. D'Andrea in Support of Opposer's Motion to Enforce Suspension of Proceedings was served on the following counsel of record for Applicant by depositing the same in the U.S. Mail, first class mail postage prepaid, this 21st day of December, 2009:

Gary Clark, Esq.
Susan Hwang, Esq.
Sheppard, Mullin, Richter & Hampton LLP
333 South Hope Street, 48th Floor
Los Angeles, California 90071

A handwritten signature in cursive script, appearing to read "Nancy Tapia", is written over a horizontal line.

APPENDIX A

Opposer's Motion to Enforce Suspension of Proceedings

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

BRINK'S NETWORK, INCORPORATED,

Opposer,

v.

THE BRINKMANN CORPORATION,

Applicant.

Opposition No. 91164764

**APPLICANT'S NOTICE OF SUBPOENAS FOR PRODUCTION OF DOCUMENTS
AND DEPOSITION OF HAMPTON PRODUCTS INTERNATIONAL CORPORATION**

TO THE PARTIES AND THEIR ATTORNEYS OF RECORD:

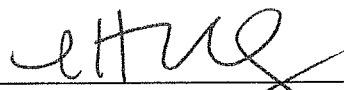
PLEASE TAKE NOTICE that, pursuant to RULE 45 of the FEDERAL RULES OF CIVIL PROCEDURE, Applicant The Brinkmann Corporation is serving subpoenas on Hampton Products International Corporation, copies of which are attached hereto.

PLEASE TAKE FURTHER NOTICE that, pursuant to RULE 45 of the FEDERAL RULES OF CIVIL PROCEDURE, Hampton Products International Corporation is requested to produce the documents and things in its custody, possession, or control specified in the Schedule of Documents and Things to the attached document subpoena on Tuesday, August 25, 2009 at 9:00 a.m., at the offices of Sheppard, Mullin, Richter & Hampton LLP, 650 Town Center Drive, 4th Floor, Costa Mesa, California 92626.

PLEASE TAKE FURTHER NOTICE that, pursuant to RULES 30(b)(6) and 45 of the FEDERAL RULES OF CIVIL PROCEDURE, Applicant The Brinkmann Corporation will conduct a deposition upon oral examination of Hampton Products International Corporation commencing at 9:00 a.m. on Tuesday, September 1, 2009, or such other date and time as the parties may agree, at the law offices of Sheppard, Mullin, Richter & Hampton LLP, 650 Town Center Drive, 4th Floor, Costa Mesa, California 92626. The deponent is not a natural person and is a party to this action. Pursuant to RULE 30(b)(6) of the FEDERAL RULES OF CIVIL PROCEDURE, Hampton Products International Corporation shall designate one or more officers, directors, or managing agents, employees or other persons who consent to testify on its behalf, regarding the subjects described in the Schedule of Testimony Topics to the attached deposition subpoena.

The deposition will be taken before a notary public or other person authorized to administer oaths.

Dated: August 10, 2009



Susan Hwang, Esq.
Sheppard, Mullin, Richter & Hampton LLP
333 South Hope Street, 48th Floor
Los Angeles, California 90071
Tel.: (213) 620-1780
Fax: (213) 620-1398

Attorneys for Applicant
THE BRINKMANN CORPORATION

CERTIFICATE OF SERVICE

This is to certify that I have this day served a copy of the foregoing "Applicant's Notice Of Deposition Of Hampton Products International Corporation and Notice of Subpoena" by placing a copy in the United States Mail, postage pre-paid, addressed as follows: Nancy S. Lapidus, counsel for Opposer, at Howrey LLP, 1299 Pennsylvania Avenue, N.W., Washington, DC 20004.

Dated: August 10, 2009



SUSAN HWANG

UNITED STATES DISTRICT COURT

for the
Central District of California

BRINK'S NETWORK, INCORPORATED

Plaintiff

v.

THE BRINKMANN CORPORATION

Defendant

Civil Action No. 91164764

(If the action is pending in another district, state where:

USPTO TTAB

SUBPOENA TO TESTIFY AT A DEPOSITION OR TO PRODUCE DOCUMENTS IN A CIVIL ACTION

To:

HAMPTON PRODUCTS INTERNATIONAL CORPORATION
50 ICON, FOOTHILL RANCH, CALIFORNIA 92610

☒ **Testimony:** **YOU ARE COMMANDED** to appear at the time, date, and place set forth below to testify at a deposition to be taken in this civil action. If you are an organization that is *not* a party in this case, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment:

SEE ATTACHED SCHEDULE OF TESTIMONY TOPICS

Place:

Sheppard, Mullin, Richter & Hampton LLP
650 Town Center Drive, 4th Floor
Costa Mesa, California 92626

Date and Time:

September 1, 2009, 9:00 a.m.

The deposition will be recorded by this method: Stenographic

☐ **Production:** You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and permit their inspection, copying, testing, or sampling of the material:

SEE ATTACHED SCHEDULE OF TESTIMONY

The provisions of Fed. R. Civ. P. 45(c), relating to your protection as a person subject to a subpoena, and Rule 45 (d) and (e), relating to your duty to respond to this subpoena and the potential consequences of not doing so, are attached.

Date: August 10, 2009

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

Attorney's signature

Gary A. Clark

The name, address, e-mail, and telephone number of the attorney representing (name of party) The Brinkmann Corporation, who issues or requests this subpoena, are:

Gary A. Clark, Esq.
Sheppard, Mullin, Richter & Hampton LLP
333 So. Hope St., 43rd Fl, Los Angeles, California 90071; Tel: (213) 617-4197; gclark@sheppardmullin.com

Civil Action No. 91164764

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

This subpoena for *(name of individual and title, if any)* _____
was received by me on *(date)* _____

☐ I personally served the subpoena on the individual at *(place)* _____
_____ on *(date)* _____; or

☐ I left the subpoena at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

☐ I served the subpoena on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

☐ I returned the subpoena unexecuted because _____; or

☐ Other *(specify)*:

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
tendered to the witness fees for one day's attendance, and the mileage allowed by law, in the amount of
\$ _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

**SCHEDULE OF TESTIMONY TOPICS
TO SUBPOENA TO
HAMPTON PRODUCTS INTERNATIONAL CORPORATION
50 ICON
FOOTHILL RANCH, CA 92610
TEL. (949) 472-4256
FAX (949) 472-9657**

This Schedule of Testimony Topics sets forth the matters below on which Applicant Brinkmann seeks examination from Hampton. Hampton, therefore, must designate one or more of its officers, directors, managing agents, employees, or other persons who consent to testify on its behalf who are the most qualified to testify on its behalf as to the following matters.

I.

DEFINITIONS

1. “You,” “your” and “Hampton” each mean Hampton Products International Corporation, all of its divisions, departments, and other operating units (including but not limited to Hampton Automotive Group), and include its present and principals, directors, officers, members, principals, employees, agents, representatives, and attorneys, whether employed or retained on a full-time, part-time, independent contract, commission or other basis.

2. “Person” means any individual, corporation, partnership, limited partnership, limited liability company, association, organization, joint venture, governmental unit or entity, and any other kind of business or other entity, and the directors, officers, partners, members, employees, agents, representatives and attorneys of any such person.

3. “Brink’s Network” and “Opposer” mean (a) the entities comprising (a) Opposer Brink’s Network, Incorporated, including (i) all of its divisions, departments, and

other operating units, (ii) its predecessors in interest, and (iii) its parents, subsidiaries, and affiliates, including but not limited to The Brink's Company, Brink's Guarding Services, Inc., Brink's Home Security, Inc. and Brink's, Incorporated (collectively, the "Opposer entities"), and (b) the individuals comprising all of the Opposer entities' present and former (i) directors, (ii) officers, (iii) members, (iv) employees, (v) agents, (vi) representatives, (vii) attorneys, and (viii) others acting or purporting to act on behalf of any of the Opposer entities, whether employed or retained on a full-time, part-time, independent contract, commission, or other basis.

4. "Brinkmann" and "Applicant" means (a) Applicant The Brinkmann Corporation, and (b) the individuals comprising all of its present and former (i) directors, (ii) officers, (iii) employees, (iv) agents, (v) representatives, and (vi) attorneys, whether employed or retained on a full-time, part-time, independent contract, commission, or other basis.

5. "Document" means all items within the scope of FED. R. CIV. P. 34(a) and all forms of writings as defined in FED. R. EVID. 1001(1), and includes any reduction to tangible form, including any written, recorded or filmed matter and any computer, magnetic or optical memory or storage, of any communications, information, or data of any kind or nature, however produced or reproduced, including originals, drafts and copies, wherever located. For documents in the form of computer, magnetic or optical storage, this definition requires production of such documents in machine-readable or usable form (e.g., magnetic or optical disk or tape), as well as printouts of the information or data in the computer files or programs. This definition applies to all documents in your possession, custody, or control, or that of your officers, directors, agents, representatives, employees, and attorneys, whether employed or retained on a full-time, part-time, independent contract, commission, or other basis, irrespective of who generated, prepared, or signed the documents. A document is deemed to be within your control if you have ownership, possession or custody of the document or a copy, or the right to secure the document or a copy from any person or public or private entity having physical possession of it.

6. "Thing" means any tangible item, including, but not limited to, mock-ups, specimens, models, prototypes, and samples of any device, product, or apparatus, or parts thereof.

7. "Brink's Mark" means any trademark or service mark that includes the word "Brink's" or "Brinks" in any manner or form, whether alone or in combination with any other word, name, symbol, or device.

8. "Brink's Product" and "Brink's Service" mean, respectively, any product and service advertised, promoted, distributed, offered for sale, sold, or provided under any Brink's Mark by Hampton.

9. "Brinkmann Mark" means any trademark or service mark that includes the word "Brinkmann" in any manner or form, whether alone or in combination with any other word, name, symbol, or device.

10. "Brinkmann Product" means any product advertised, promoted, distributed, offered for sale, sold, or provided under any Brinkmann Mark.

11. "Pertaining to" means and refers to alluding to, analyzing, comprising, connected with, constituting, containing, concerning, discussing, describing, evidencing, incorporating, identifying, involving, memorializing, referring to, reflecting, regarding, relating to, responding to, showing, or in any other way referring to the subject matter referred to in the request. A request for documents and/or things pertaining to an allegation, or to a denial of an allegation, in a pleading includes documents and/or things tending to support or to refute such allegation or denial.

12. "Identify" or to give the "identity" of means (a) in the case of a document, to state the type of document (e.g., letter, memorandum, license, etc.), the date it bears or was prepared or sent, the identity of the author, originator or sender, the identity of each person who received the document (whether or not named as an addressee), its subject and substance, the number of pages comprising the document, and the present location and the identity of the custodian of the document, and (b) in the case of a person, to state the name and present or last known street address, city and state of residence, and telephone number.

13. "Communication" means any written, oral, or other transmission of information between a sender and a recipient. Communication comprises any and all such means including speech and writings, as well as any and all means of electronic or optical signals of any kind, specifically including e-mail.

II.

INSTRUCTIONS

1. Third-party witness Hampton Products International Corporation's deposition is being taken pursuant to Federal Rules of Civil Procedure 30(b)(6) and 45. Pursuant to Rule 30(b)(6), Applicant Brinkmann may, in a subpoena for a deposition directed at a corporation or partnership or association, "describe with reasonable particularity the matters on which examination is requested." Then, the "organization so named shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify The persons so designated shall testify as to matters known or reasonably available to the organization."

2. The deposition will take place before an officer authorized to administer oaths by the laws of the United States or the laws of the place where the examination is to be held and in accordance with the provisions of Federal Rules of Civil Procedure 30, 45(a), and 45(a)(1)(C), and will be stenographically recorded.

III.

MATTERS FOR EXAMINATION

TOPIC FOR TESTIMONY NO. 1:

Hampton's business and its products or services.

TOPIC FOR TESTIMONY NO. 2:

Your business relationship with Brink's Network.

TOPIC FOR TESTIMONY NO. 3:

All communications between you and Brink's Network pertaining to any potential, proposed or actual license with Brink's Network for any Brink's Mark or Brink's Product

TOPIC FOR TESTIMONY NO. 4:

All presentations, studies, analyses or investigations pertaining to Brink's Network, or any potential, proposed or actual license with Brink's Network for any Brink's Mark or Brink's Product.

TOPIC FOR TESTIMONY NO. 5:

All negotiations or discussions with Brink's Network pertaining to any potential, proposed or actual license for any Brink's Mark or Brink's Product.

TOPIC FOR TESTIMONY NO. 6:

All negotiations or discussions with Brink's Network pertaining to any amendments for any license for any Brink's Mark or Brink's Product.

TOPIC FOR TESTIMONY NO. 7:

All licenses with Brink's Network for any Brink's Mark or Brink's Product.

TOPIC FOR TESTIMONY NO. 8:

All amendments to any licenses with Brink's Network for any Brink's Mark or Brink's Product.

TOPIC FOR TESTIMONY NO. 9:

The identification of each Brink's Mark used by Hampton and each Brink's Product manufactured, advertised, offered for sale or sold by Hampton (e.g., by product name and SKU) in the United States, from introduction to the present.

TOPIC FOR TESTIMONY NO. 10:

The dates that each Brink's Product manufactured, advertised, offered for sale or sold by Hampton were first offered for sale and, if applicable, stopped offering for sale.

TOPIC FOR TESTIMONY NO. 11:

The channels of distribution for each Brink's Product manufactured, advertised, offered for sale or sold by Hampton (e.g., via bricks and mortar stores, mail-order, catalog, Internet, etc.) in the United States.

TOPIC FOR TESTIMONY NO. 12:

The amount of sales annually in dollars in the United States by Hampton of each different Brink's Product manufactured, advertised, offered for sale or sold by Hampton from introduction to the present.

TOPIC FOR TESTIMONY NO. 13:

The content of all advertising and promotion of any Brink's Product manufactured, advertised, offered for sale or sold by Hampton in the United States.

TOPIC FOR TESTIMONY NO. 14:

The avenues (e.g., print, television, radio, Internet, etc.) for all advertising and promotion of any Brink's Product manufactured, advertised, offered for sale or sold by Hampton in the United States.

TOPIC FOR TESTIMONY NO. 15:

The amount of advertising and promotional expenditures annually in dollars in the United States by Hampton of each different Brink's Product manufactured, advertised, offered for sale or sold by Hampton from introduction to the present.

TOPIC FOR TESTIMONY NO. 16:

The amount of royalty payments annually in dollars in the United States by Hampton of each different Brink's Product manufactured, advertised, offered for sale or sold by Hampton from introduction to the present.

TOPIC FOR TESTIMONY NO. 17:

The purchasers and prospective purchasers for each Brink's Product manufactured, advertised, offered for sale or sold by Hampton in the United States

TOPIC FOR TESTIMONY NO. 18:

The marketplace competitors for each Brink's Product manufactured, advertised, offered for sale or sold by Hampton in the United States

TOPIC FOR TESTIMONY NO. 19:

The retailers for each type of Brink's Product manufactured, advertised, offered for sale or sold by Hampton (e.g., security light, lock, doorknob, coupler, etc.) in the United States

TOPIC FOR TESTIMONY NO. 20:

All quality control standards or requirements for any Brink's Product manufactured, advertised, offered for sale or sold by Hampton, including any communications between you and Brink's Network on such topic.

TOPIC FOR TESTIMONY NO. 21:

All activities of Brink's Network related to enforcing quality control standards or requirements for any Brink's Product manufactured, advertised, offered for sale or sold by Hampton, including any communications between you and Brink's Network on such topic.

TOPIC FOR TESTIMONY NO. 22:

All trademark usage guidelines by Brink's Network for any Brink's Mark (including use of the federal registration symbol), including any communications between you and Brink's Network on such topic.

TOPIC FOR TESTIMONY NO. 23:

All activities of Brink's Network related to enforcing trademark usage guidelines for any Brink's Mark used by Hampton (including use of the federal registration symbol), including any communications between you and Brink's Network on such topic.

TOPIC FOR TESTIMONY NO. 24:

Hampton's knowledge of any federal trademark applications or registrations by Brink's Network for any marks incorporating BRINK'S or BRINKS.

TOPIC FOR TESTIMONY NO. 25:

Instances of customer complaints associated with any Brink's Product manufactured, advertised, offered for sale or sold by Hampton, including any communications between you and Brink's Network on such topic.

TOPIC FOR TESTIMONY NO. 26:

Hampton's knowledge of Brinkmann, Brinkmann's Products or Brinkmann's Mark, including any communications between you and Brink's Network on such topic.

TOPIC FOR TESTIMONY NO. 27:

Hampton's knowledge of any party other than Brink's Network or Brinkmann using a Brink formative mark, including any communications between you and Brink's Network on such topic.

TOPIC FOR TESTIMONY NO. 28:

The spin-off by The Brink's Company of Brinks Home Security Holdings, Inc., including any communications between you and Brink's Network on such topic.

TOPIC FOR TESTIMONY NO. 29:

The identification of the individuals at Hampton and at Brink's Network most knowledgeable about any presentations, discussions, negotiations, licenses or amendments to any licenses between the parties, including the first and last name, title and involvement of such individuals.

Civil Action No. 91164764

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

This subpoena for *(name of individual and title, if any)* _____
was received by me on *(date)* _____

☐ I personally served the subpoena on the individual at *(place)* _____
_____ on *(date)* _____; or

☐ I left the subpoena at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

☐ I served the subpoena to *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

☐ I returned the subpoena unexecuted because _____; or

☐ other *(specify)*:

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
tendered to the witness fees for one day's attendance, and the mileage allowed by law, in the amount of

\$ _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

**SCHEDULE OF DOCUMENTS AND THINGS
TO SUBPOENA TO
HAMPTON PRODUCTS INTERNATIONAL CORPORATION
50 ICON
FOOTHILL RANCH, CA 92610
TEL. (949) 472-4256
FAX (949) 472-9657**

This Schedule of Documents and Things identifies the documents and tangible things requested by The Brinkmann Corporation, under Rule 45(a)(1)(C) and (d) of the Federal Rules of Civil Procedure and Rule 2.120(a) of the Trademark Rules of Practice, to be produced by Hampton Products International Corporation for inspection and copying pursuant to the attached subpoena.

I.

DEFINITIONS

1. "You," "your" and "Hampton" each mean Hampton Products International Corporation, all of its divisions, departments, and other operating units (including but not limited to Hampton Automotive Group) and include its present and principals, directors, officers, members, principals, employees, agents, representatives, and attorneys, whether employed or retained on a full-time, part-time, independent contract, commission or other basis.

2. "Person" means any individual, corporation, partnership, limited partnership, limited liability company, association, organization, joint venture, governmental unit or entity, and any other kind of business or other entity, and the directors, officers, partners, members, employees, agents, representatives and attorneys of any such person.

3. “Brink’s Network” and “Opposer” mean (a) the entities comprising Opposer Brink’s Network, Incorporated, including (i) all of its divisions, departments, and other operating units, (ii) its predecessors in interest, and (iii) its parents, subsidiaries, and affiliates, including but not limited to The Brink’s Company, Brink’s Guarding Services, Inc., Brink’s Home Security, Inc. and Brink’s, Incorporated (collectively, the “Opposer entities”), and (b) the individuals comprising all of the Opposer entities’ present and former (i) directors, (ii) officers, (iii) members, (iv) employees, (v) agents, (vi) representatives, (vii) attorneys, and (viii) others acting or purporting to act on behalf of any of the Opposer entities, whether employed or retained on a full-time, part-time, independent contract, commission, or other basis.

4. “Brinkmann” and “Applicant” means (a) The Brinkmann Corporation, and (b) the individuals comprising all of its present and former (i) directors, (ii) officers, (iii) employees, (iv) agents, (v) representatives, and (vi) attorneys, whether employed or retained on a full-time, part-time, independent contract, commission, or other basis.

5. “Document” means all items within the scope of FED. R. CIV. P. 34(a) and all forms of writings as defined in FED. R. EVID. 1001(1), and includes any reduction to tangible form, including any written, recorded or filmed matter and any computer, magnetic or optical memory or storage, of any communications, information, or data of any kind or nature, however produced or reproduced, including originals, drafts and copies, wherever located. For documents in the form of computer, magnetic or optical storage, this definition requires production of such documents in machine-readable or usable form (e.g., magnetic or optical disk or tape), as well as printouts of the information or data in the computer files or programs. This definition applies to all documents in your possession, custody, or control, or that of your officers, directors, agents, representatives, employees, and attorneys, whether employed or retained on a full-time, part-time, independent contract, commission, or other basis, irrespective of who generated, prepared, or signed the documents. A document is deemed to be within your control if you have

ownership, possession or custody of the document or a copy, or the right to secure the document or a copy from any person or public or private entity having physical possession of it.

6. “Thing” means any tangible item, including, but not limited to, mock-ups, specimens, models, prototypes, and samples of any device, product, or apparatus, or parts thereof.

7. “Brink’s Mark” means any trademark or service mark that includes the words “Brink’s” or “Brinks” in any manner or form, whether alone or in combination with any other word, name, symbol, or device.

8. “Brink’s Product” and “Brink’s Service” mean, respectively, any product and service advertised, promoted, distributed, offered for sale, sold, or provided by Hampton under any Brink’s Mark.

9. “Brinkmann Mark” means any trademark or service mark that includes the word “Brinkmann” in any manner or form, whether alone or in combination with any other word, name, symbol, or device.

10. “Brinkmann Product” means any product advertised, promoted, distributed, offered for sale, sold, or provided under any Brinkmann Mark.

11. “Pertaining to” means and refers to alluding to, analyzing, comprising, connected with, constituting, containing, concerning, discussing, describing, evidencing, incorporating, identifying, involving, memorializing, referring to, reflecting, regarding, relating to, responding to, showing, or in any other way referring to the subject matter referred to in the request. A request for documents and/or things pertaining to an allegation, or to a denial of an

allegation, in a pleading includes documents and/or things tending to support or to refute such allegation or denial.

12. “Identify” or to give the “identity” of means (a) in the case of a document, to state the type of document (e.g., letter, memorandum, license, etc.), the date it bears or was prepared or sent, the identity of the author, originator or sender, the identity of each person who received the document (whether or not named as an addressee), its subject and substance, the number of pages comprising the document, and the present location and the identity of the custodian of the document, and (b) in the case of a person, to state the name and present or last known street address, city and state of residence, and telephone number.

13. “Communication” means any written, oral, or other transmission of information between a sender and a recipient. Communication comprises any and all such means including speech and writings, as well as any and all means of electronic or optical signals of any kind, specifically including e-mail.

II.

INSTRUCTIONS

1. Rule 45(d)(1) of the Federal Rules of Civil Procedure provides that “[a] person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.” If you elect to produce documents as they are kept in the usual course of business, they should be produced in the boxes, file folders, bindings, or other containers in which the documents are found. The title, labels, or other descriptions of the boxes, file folders, binders, or other containers should be left intact.

2. Whenever appropriate, the singular form of a word shall be interpreted in the plural and vice versa; verb tenses shall be interpreted to include past, present, and future tenses; the terms “and” as well as “or” shall be construed either conjunctively or disjunctively, as necessary to bring within the scope of this subpoena any documents that might otherwise be considered outside their purview; and words imparting the masculine include the feminine and vice versa.

3. In producing the requested documents and things, you are required to furnish all documents and things available to you, including, by way of illustration only, and not by way of limitation, documents and things in the possession of your attorneys, or in the possession of your or their consultants, investigators, advisors, agents, or associates.

4. Rule 45(d)(2) of the Federal Rules of Civil Procedure provides that “[w]hen information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be expressly made and shall be

supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.” If any documents requested herein are withheld by you based upon a claim of privilege or work product, state as to each such document:

- (1) The basis for withholding the document;
- (2) The nature of the document withheld (e.g., letter);
- (3) The date of the document;
- (4) The identity of the author;
- (5) The identity of each recipient of the document or any copy hereof;
- (6) The length of the document in pages;
- (7) The location of the original and each copy of the document; and
- (8) The general subject matter of the document.

III.

DOCUMENTS AND THINGS REQUESTED

1. All documents and things pertaining to any business relationship with Brink's Network.
2. All documents and things constituting or reflecting any presentations, studies, analyses or investigations pertaining to Brink's Network or any Brink's Mark or Brink's Product.
3. All documents and things constituting or reflecting any proposals, negotiations, discussions or communications pertaining to any potential, proposed or actual license with Brink's Network for any Brink's Mark or Brink's Product.
4. All documents and things constituting or reflecting any proposals, negotiations, discussions or communications pertaining to any potential, proposed or actual amendments to any license with Brink's Network for any Brink's Mark or Brink's Product.
5. All licenses with Brink's Network for any Brink's Mark or Brink's Product.
6. All amendments to any licenses with Brink's Network for any Brink's Mark or Brink's Product.
7. Documents and things sufficient to identify each Brink's Mark ever used by Hampton and each Brink's Product manufactured, advertised, offered for sale or sold by Hampton (*e.g.*, by product name and SKU) in the United States, from introduction to the present.

8. Documents and things sufficient to identify each channel of distribution (*e.g.*, bricks and mortar stores, mail-order, catalog, Internet, *etc.*) for each Brink's Product manufactured, advertised, offered for sale or sold by Hampton in the United States.

9. Documents and things sufficient to identify the amount of sales annually in dollars in the United States by Hampton of each different Brink's Product manufactured, advertised, offered for sale or sold by Hampton from introduction to the present.

10. A sample of each different advertisement or promotional materials ever used by Hampton for each different Brink's Product manufactured, advertised, offered for sale or sold by Hampton from introduction to the present.

11. Documents and things sufficient to identify all avenues (*e.g.*, print, television, radio, Internet, *etc.*) of advertising and promotion of any Brink's Product manufactured, advertised, offered for sale or sold by Hampton in the United States.

12. Documents and things sufficient to identify the amount of advertising and promotional expenditures annually in dollars in the United States by Hampton for Brink's Products manufactured, advertised, offered for sale or sold by Hampton from introduction to the present, broken down by type or category of Brink's Product (*e.g.*, locks, door hardware, lighting, *etc.*) if available.

13. Documents and things sufficient to identify the amount of royalty payments to Brink's Network annually in dollars in the United States by Hampton of each different Brink's Product manufactured, advertised, offered for sale or sold by Hampton from introduction to the

present, broken down by type or category of Brink's Product (e.g., locks, door hardware, lighting, etc.) if available.

14. Documents and things sufficient to identify the demographics of purchasers and prospective purchasers for each Brink's Product manufactured, advertised, offered for sale or sold by Hampton in the United States.

15. Documents and things sufficient to identify the marketplace competitors for each Brink's Product manufactured, advertised, offered for sale or sold by Hampton in the United States.

16. A representative sample of each type of Brink's Product manufactured, advertised, offered for sale or sold by Hampton (*e.g.*, lock, door hardware, lighting, *etc.*).

17. A representative sample of packaging for each type of Brink's Product manufactured, advertised, offered for sale or sold by Hampton (*e.g.*, lock, door hardware, lighting, *etc.*).

18. Documents and things sufficient to identify each retailer for each type of Brink's Product manufactured, advertised, offered for sale or sold by Hampton (*e.g.*, lock, door hardware, lighting, *etc.*).

19. All catalogs for any Brink's Product manufactured, advertised, offered for sale or sold by Hampton, from introduction of the product to the present.

20. All documents and things pertaining to quality control standards or requirements for any Brink's Product manufactured, advertised, offered for sale or sold by Hampton.

21. All documents and things pertaining to any communications between you and Brink's Network referring to quality control standards or requirements for any Brink's Product manufactured, advertised, offered for sale or sold by Hampton.

22. All documents and things pertaining to any trademark usage guidelines by Brink's Network for any Brink's Mark.

23. All documents and things pertaining to any communications between you and Brink's Network referring to trademark usage guidelines for any Brink's Mark.

24. All documents and things pertaining to any knowledge by Hampton of Brink's Network's federal applications or registrations incorporating BRINK'S.

25. Documents and things sufficient to identify the types of customer complaints associated with any Brink's Product manufactured, advertised, offered for sale or sold by Hampton.

26. All documents and things pertaining to Brink's Network, any Brink's Mark or Brink's Products not otherwise requested herein.

27. All documents and things pertaining to Hampton's knowledge of Brinkmann, Brinkmann's Products or Brinkmann's Mark, including any investigations.

28. All documents and things pertaining to Hampton's knowledge of any party other than Brink's Network or Brinkmann using a Brink formative mark, including any investigations.

29. All documents and things pertaining to Hampton's knowledge of the spin-off by The Brink's Company of Brinks Home Security Holdings, Inc.

30. All documents and things pertaining to the effect on Hampton of the spin-off by The Brink's Company of Brinks Home Security Holdings, Inc.

31. Documents and things sufficient to identify all individuals at Hampton involved in any licenses, license negotiations or communications between Hampton and Brink's Network.

32. Documents and things sufficient to identify all individuals at Brink's Network involved in any licenses, license negotiations or communications between Hampton and Brink's Network.

33. All documents pertaining to any communications between you and any persons referring to Brinkmann, any Brinkmann Mark or Brinkmann Product from 1983 to the present.

34. All documents pertaining to any communications between you and any persons referring to any other parties using any Brink formative mark.

APPENDIX B

Opposer's Motion to Enforce Suspension of Proceedings



333 South Hope Street | 48th Floor | Los Angeles, CA 90071-1448
213-620-1780 office | 213-620-1398 fax | www.sheppardmullin.com

Susan Hwang
Writer's Direct Line: 213-617-4279
shwang@sheppardmullin.com

Our File Number: 0SEM-116943

August 20, 2009

VIA E-MAIL

Nancy S. Lapidus, Esq.
Howrey LLP
1299 Pennsylvania Avenue, N.W.
Washington, DC 20004
Facsimile: (202) 383-7195

Re: TTAB Opposition Proceeding No. 91164764
Brink's Network v. The Brinkmann Corporation

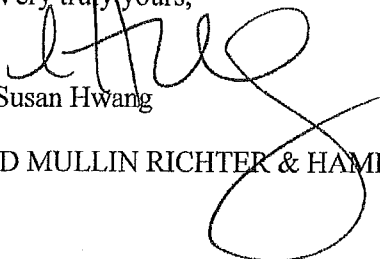
Dear Nancy:

We are in receipt of your letter dated today regarding the confidentiality designations for Mr. Lennon, deposition availability dates for Mr. Brinkmann and Hampton Products and the Subpoena to Produce Documents served on Hampton.

We have forwarded the confidentiality designations to the court reporter and will forward the final transcripts to you as soon as we receive them. We are confirming that Mr. Brinkmann is available for his deposition noticed for October 6 and will advise you as soon as we receive confirmation. If he is not available that day, we will provide alternative dates. We are also reviewing availability dates for Hampton's deposition in October and will advise you as soon as we have such dates. Finally, you have stated that Hampton was not served with the Subpoena to Produce Documents and you have asked for a copy of the executed proof of service. A copy of the proof of service for the Subpoena to Produce Documents is enclosed.

Please contact us if you have any questions.

Very truly yours,



Susan Hwang

for SHEPPARD MULLIN RICHTER & HAMPTON LLP

W02-WEST:LSH401852453.1

Encl.

APPENDIX C

Opposer's Motion to Enforce Suspension of Proceedings



333 South Hope Street | 48th Floor | Los Angeles, CA 90071-1448
213-620-1780 office | 213-620-1398 fax | www.sheppardmullin.com

Susan Hwang
Writer's Direct Line: 213-617-4279
shwang@sheppardmullin.com

October 7, 2009

Our File Number: 0SEM-116943

VIA E-MAIL

Nancy S. Lapidus, Esq.
Howrey LLP
1299 Pennsylvania Avenue, N.W.
Washington, DC 20004

Re: TTAB Opposition Proceeding No. 91164764
Brink's Network v. The Brinkmann Corporation

Dear Nancy:

This is a follow-up to the subpoenas served on Hampton Products International Corporation on August 11, 2009. Pursuant to the subpoenas, Hampton was required to produce documents by August 25, 2009 and its deposition was to be taken on September 1, 2009. However, Alan Cooper's e-mail of August 14 informed us that both dates could not be met. Your letter of August 20 stated that "Hampton will endeavor to gather the responsive documents in the new few weeks" and asked us for availability dates in mid-October when Hampton's deposition could be taken.

It is already early October and we have yet to receive a single document from Hampton. Obviously, we cannot proceed with any deposition in mid-October. By this letter, we request that Hampton produce all responsive documents and provide us with availability dates in November when it is available for its deposition, by **October 21, 2009**. Otherwise, Brinkmann will move to compel.

We look forward to your reply.

Very truly yours,

A handwritten signature in black ink, appearing to be "SHWANG", written over the typed name "Susan Hwang".

Susan Hwang

for SHEPPARD MULLIN RICHTER & HAMPTON LLP

APPENDIX D

Opposer's Motion to Enforce Suspension of Proceedings

Nancy S. Lapidus
Partner

T 202.383.6865

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lapidusN@howrey.com

October 21, 2009

Via E-mail
Confirmation Copy by US Mail

Susan Hwang, Esquire
Sheppard, Mullin, Richter & Hampton LLP
333 South Hope Street, 48th Floor
Los Angeles, California 90071

Re: Brink's Network, Incorporated v. The Brinkmann Corp.
Opposition No. 91164764, Our File No. 05666.0002

Dear Susan:

We are responding to your letter dated October 7, 2009, which indicates Brinkmann's intent to proceed with the deposition of Hampton Products International and requests a response by October 21, 2009.

Your prior letter of August 20, 2009, stated that you would provide us with availability dates in mid-October for the Hampton deposition. Specifically, your letter states as follows: "We are also reviewing availability dates for Hampton's deposition in October *and will advise you as soon as we have such dates.*" Your October 7 letter is the first communication we have received related to the scheduling of the Hampton deposition since August 20. You now wish to go forward with the Hampton deposition in November and have asked us to advise you of potential dates on which that deposition can take place.

Rule 2.120(e) of the Trademark Rules of Practice provides that the filing of a motion to compel results in a suspension of the proceedings. Although the Board has not yet issued a suspension order in response to Brink's Motion to Compel Discovery Deposition of Mr. J. Baxter Brinkmann, filed on October 1, 2009, the proceedings are effectively suspended by the filing of that motion. Rule 2.120(e) also states that the filing of a motion to compel does not toll the time for a party to comply with outstanding discovery obligations or appear for any noticed discovery deposition. However, because Hampton is not a party to this proceeding, the requirements of Rule 2.120(e) related to discovery obligations of a party do not apply. After the Board resolves the pending Motion to Compel Discovery and the proceedings resume, we will serve Hampton's responses and objections to the subpoenas and provide proposed dates for the deposition.

Sincerely,



Nancy S. Lapidus

NSL/Inf
Enclosure

cc: Kevin Yocum, Esquire

APPENDIX E

Opposer's Motion to Enforce Suspension of Proceedings



333 South Hope Street | 48th Floor | Los Angeles, CA 90071-1448
213-620-1780 office | 213-620-1398 fax | www.sheppardmullin.com

Susan Hwang
Writer's Direct Line: 213-617-4279
shwang@sheppardmullin.com

October 30, 2009

Our File Number: 0SEM-116943

VIA E-MAIL

Nancy S. Lapidus, Esq.
Howrey LLP
1299 Pennsylvania Avenue, N.W.
Washington, DC 20004

Re: TTAB Opposition Proceeding No. 91164764
Brink's Network v. The Brinkmann Corporation

Dear Nancy:

We are in receipt of your letter dated October 21, 2009, regarding the deposition and production of documents by Hampton Products International Corporation. You have advised us that Hampton is not a party in this proceeding and as such, its discovery obligations are tolled because of the suspension of proceedings pursuant to Brink's Network's motion to compel.

First, we disagree with your reading of 37 C.F.R. § 2.120(e). Rule 2.120(e) states that the filing of a motion to compel does not toll the time for a "party" to comply with outstanding discovery obligations or appear for any noticed discovery deposition. Your assumption that Rule 2.120(e) does not apply to Hampton because it is not a "party" is illogical and not validly based on any trademark rules of practice. It would be absurd and contrary to the efficient resolution of Board proceedings to make a distinction between "parties" and "non-parties" for tolling of discovery obligations.

Second, your letter suggests that Hampton has not produced documents or provided any deposition dates because you were waiting for us to provide deposition availability dates in October. Please note that Alan Cooper's e-mail of August 14, 2009 advised us that Hampton was checking whether documents could be produced by August 25, 2009. Your letter of August 20, 2009 then advised us that "Hampton will endeavor to gather the responsive documents in the next few weeks." In order for Hampton's deposition to take place in October, Hampton was required to produce documents to Brinkmann well in advance of that date. We had no reason to provide you with dates in October since we have not received a single

SHEPPARD MULLIN RICHTER & HAMPTON LLP

Nancy S. Lapidus, Esq.
October 30, 2009
Page 2

document to date from Hampton. Accordingly, your surprise that Brinkmann wishes to proceed with Hampton's deposition in November is disingenuous.

The Board previously suspended the proceeding on September 16, 2009 as a result of granting Brinkmann's motion to divide its application and again on October 24, 2009 as a result of Brink's Network's motion to compel. It is curious that you did not raise Rule 2.120(e) back in September and that you are only raising it now.

Brinkmann has been more than cooperative and accommodating of Hampton's schedule in producing documents and in providing deposition availability dates. Your recalcitrance on this issue forces us to request that you agree to a date certain when we will receive any written response including objections and copies of production documents from Hampton. We request that you agree to provide any such response and copies of documents by **November 13, 2009**. If we cannot agree on a date certain within the next 2-3 weeks, Brinkmann will have to take steps to enforce the subpoena.

We look forward to your reply.

Very truly yours,



Susan Hwang

for SHEPPARD MULLIN RICHTER & HAMPTON LLP

W02-WEST:LSH402277179.1

APPENDIX F

Opposer's Motion to Enforce Suspension of Proceedings

Nancy S. Lapidus
Partner

T 202.383.6865

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lapidusN@howrey.com

November 13, 2009

Via E-mail
Confirmation Copy by US Mail

Susan Hwang, Esquire
Sheppard, Mullin, Richter & Hampton LLP
333 South Hope Street, 48th Floor
Los Angeles, California 90071

Re: Brink's Network, Incorporated v. The Brinkmann Corp.
Opposition No. 91164764, Our File No. 05666.0002

Dear Susan:

We are responding to your letter dated October 30, 2009, regarding the deposition of Hampton Products International.

The suspension of proceedings on September 16, 2009, resulted from Brinkmann's filing of a motion to divide; the filing of that motion did not invoke Rule 2.120(e). By contrast, the suspension of proceedings resulting from the filing of Brink's Motion to Compel on October 1, 2009, is governed by Rule 2.120(e). Indeed, the Order entered by the Board on October 24, 2009 specifically cites to that Rule. Our letter of October 21, 2009 properly relied on the express language of Rule 2.120(e), following the filing of Brink's Motion to Compel.

While you may disagree with Brink's position, you have not cited a single Rule or case to support your argument that the term "party" in Rule 2.120(e) includes Hampton. Your assumption that the term "party" in the context of Rule 2.120(e) includes an entity that is neither the opposer nor the applicant in an *inter partes* proceeding is illogical and not validly based on any of the Trademark Rules of Practice or decisional law. Accordingly, we will serve Hampton's responses and objections to the subpoenas and provide proposed dates for the deposition following disposition of Brink's Motion to Compel and a resumption of the proceedings.

Sincerely,


Nancy S. Lapidus

NSL/Inf

cc: Kevin Yocum, Esquire

APPENDIX G

Opposer's Motion to Enforce Suspension of Proceedings



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Our File Number: 0SEM-116943

December 11, 2009

VIA E-MAIL

Nancy S. Lapidus, Esq.
Howrey LLP
1299 Pennsylvania Avenue, N.W.
Washington, DC 20004

Re: TTAB Opposition Proceeding No. 91164764
Brink's Network v. The Brinkmann Corporation

Dear Nancy:

This is a follow-up to my letters dated August 20, October 7, and October 30, 2009, and a response to your letter dated November 13, 2009, regarding the failure of Hampton Products International to respond to the Subpoena for the Production of Documents and the Subpoena for Deposition of Hampton Products International Corporation which were served on August 11, 2009. We write this letter to request a pre-filing conference under LOCAL RULE 37-1 of the U.S. District Court for the Central District of California.

As previously stated, Brinkmann disagrees with your reading of 37 C.F.R. § 2.120(e) and does not accept your position that Hampton's discovery obligations are tolled pending the resolution of the motion to compel before the Trademark Trial and Appeal Board. It is illogical to assume that a non-party's discovery obligations are tolled by negative implication merely because the Board rules state that a "party's" discovery obligations are not tolled. Hampton is reading an illogical inference into 37 C.F.R. § 2.120(e).

Pursuant to my October 30, 2009 letter, we agreed to provide Hampton with an extension of time, to and including November 13, 2009, to provide responses and produce documents and to provide dates of availability for a deposition. To date, however, Hampton has failed to provide any responses, produce any documents, or appear for a deposition.

In the event that the parties are unable to resolve their differences in the pre-filing conference, Brinkmann intends to seek an order compelling Hampton to produce all responsive documents, without objection, and to appear at a deposition forthwith. Brinkmann will also seek reimbursement of its attorneys' fees in preparing and filing the motion to compel. Please let me

SHEPPARD MULLIN RICHTER & HAMPTON LLP

Nancy S. Lapidus, Esq.
December 11, 2009
Page 2

know when you are available for the L.R. 37-1 pre-filing conference within the next ten (10) calendar days.

We look forward to your reply.

Sincerely,

A handwritten signature in black ink, appearing to read 'Susan Hwang', written in a cursive style.

Susan Hwang

for SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

W02-WEST:1BAC2\402353080.1